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Proposed Counsel to the Debtors
and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

- - - - - x
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In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08- _____ (____)
et al., :
:
Debtors. : Jointly Administered
- - - - - x

**DEBTORS' MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE
SECTIONS 105(a), 362(b), 506, 546(b), 1107(a), 1108 AND
1129 AND BANKRUPTCY RULE 6003 AUTHORIZING PAYMENT OF
CONTRACTORS IN SATISFACTION OF LIENS**

The debtors and debtors in possession in the
above-captioned cases (collectively, the "Debtors")¹

¹ The Debtors and the last four digits of their respective taxpayer
identification numbers are as follows: Circuit City Stores, Inc.
(continued...)

hereby move for entry of an order, pursuant to sections 105(a), 362(b)(3), 506, 546(b), 1107(a), 1108 and 1129 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing, but not directing, the payment of contractors and service providers in satisfaction of perfected or potential mechanics', artisans', repairmen's, or other like liens or interests in property (collectively, the "Liens") in the ordinary course of business. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Bruce H. Besanko, Executive Vice President and Chief Financial Officer of Circuit City Stores, Inc., in Support of Chapter 11 Petitions and First Day Pleadings (the "Besanko Declaration"),

(...continued)

(3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

filed with the Court concurrently herewith. In further support of the Motion, the Debtors respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 362(b)(3), 506, 546(b), 1107(a), 1108 and 1129. Such relief is warranted pursuant to Bankruptcy Rule 6003.

BACKGROUND

3. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Besanko

Declaration, filed concurrently herewith and fully incorporated herein by reference.²

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. No trustee or examiner has been appointed in these chapter 11 cases, and no committees have yet been appointed or designated.

RELIEF REQUESTED

6. By this Motion, the Debtors request that they be authorized, but not directed, to pay the prepetition claims of certain Contractors (as defined below), on a case-by-case basis and in their sole discretion for certain prepetition services in satisfaction of valid, perfected or potential Liens that may be asserted against the Debtors' property. The Debtors estimate that the total amount of Contractor Claims (as defined below) is approximately \$6.5 million. Accordingly, the Debtors are seeking entry of an order

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Besanko Declaration.

authorizing, but not directing, payment of the Contractor Claims in an amount of up to \$6.5 million.

7. The Debtors propose that any payments made pursuant to the Motion be subject to the following conditions:

- (a) The Debtors, in their sole discretion, shall determine which parties, if any, are entitled to payment under this Motion; and
- (b) Prior to making a payment to a party under this Motion, the Debtors may, in their absolute discretion, settle all or some of the prepetition claims of such party for less than their face amount without further notice or hearing.

8. The Debtors also request that all banks and other financial institutions on which checks to the Contractors are drawn be authorized and directed to receive, process, honor and pay any and all such checks, whether presented prior to or after the Petition Date, upon each such bank receiving notice of such authorization. In addition, the Debtors request authority to issue postpetition checks as necessary to replace any prepetition checks issued with respect to the Contractor Claims that may be dishonored.

BASIS FOR RELIEF

9. The Debtors' stores, service centers, distribution centers and other facilities require significant ongoing construction, repair and maintenance work. In connection with these repair, remodeling, and construction activities, the Debtors have employed numerous third-party project managers, contractors and maintenance companies (the "Contractors") who have agreed, pursuant to contract or otherwise (the "Agreements"), to render a services or supply materials to the Debtors.

10. Although the Debtors have generally made timely payments to the Contractors, as of the Petition Date, a substantial number of the Contractors may not have been paid for certain prepetition services provided. As a result, certain Contractors may refuse to perform their ongoing obligations under the Agreements. Absent the Contractors' services, the physical condition of certain of the Debtors' stores, service centers, distribution centers and other facilities would deteriorate and the Debtors would be unable to complete their projects in a timely fashion. The Contractors'

failure to provide ongoing services would adversely impact the Debtors' retail operations and hamper their reorganization efforts.

11. Moreover, the Debtors' failure to pay the Contractors for prepetition services or materials may result in many of the Contractors having a right to assert Liens against the relevant store, service center, distribution center or other location of the Debtors, or the Debtors' goods, which Liens may be perfected notwithstanding the automatic stay established by Bankruptcy Code section 362.

12. In many cases, failure to pay the Contractors in satisfaction of the Liens would result in defaults under the Debtors' leases or claims under the Debtors' outstanding indemnities. Furthermore, the Contractors may also be able to assert Liens against the property of the Debtors' landlords at the various locations at which the Contractors provide services, thereby further jeopardizing the Debtors' relationships with their landlords.

13. Therefore, to avoid undue delay and to facilitate the continued operation of the Debtors'

businesses, the maintenance of their stores, distribution centers, repair centers, and other facilities, and the completion of ongoing remodeling, improvement and construction projects, the Debtors seek entry of an order authorizing, but not directing, them to pay and discharge, on a case-by-case basis and in their sole discretion, the claims of all Contractors that have given or could give rise to Liens against the Debtors' goods, fixtures, stores, service centers, distribution centers and/or other facilities, regardless of whether such Contractors have already perfected their interests (the "Contractor Claims"); provided, however, that with respect to each Contractor Claim (i) the Debtors shall not pay a Contractor Claim unless the Contractor has perfected or, in the Debtors' judgment, is capable of perfecting or may be capable of perfecting in the future, one or more Liens in respect of such claim; (ii) the payment of such claim shall be made with a full reservation of rights regarding the extent, validity, perfection or possible avoidance of any Liens; and (iii) the Contractor agrees to promptly release any Liens upon payment of such Contractor Claim.

APPLICABLE AUTHORITY

I. PAYMENT OF THE CONTRACTOR CLAIMS IS APPROPRIATE UNDER BANKRUPTCY CODE SECTIONS 506 AND 1129.

14. Bankruptcy Code section 506 provides that an allowed claim of a creditor secured by a lien on property is a secured claim. See 11 U.S.C. § 506. As stated above, the Debtors' payment of any Contractor Claim would be limited to those cases in which the Debtors believe that such Contractors could assert and perfect a Lien, and, thus, hold a secured claim.

15. If the Contractor Claims are secured claims, Bankruptcy Code section 1129(b)(2)(A) requires that they be satisfied through deferred cash payments totaling at least the allowed amount of each such claim, of a value as of the effective date of the plan equal to the value of the collateral securing the claim, with a continuation of the liens against the collateral; or if the collateral is to be sold, that the lien securing the claim attach to the proceeds of sale; or that the holder realize the indubitable equivalent of the claim. See 11 U.S.C. § 1129(b)(2)(A).

16. Thus, payment of the Contractor Claims in the ordinary course of business accelerates the time of payment of obligations that will have to be paid in any event, but avoids the interest and other costs incurred as a result of awaiting plan confirmation.³ Accordingly, the payment contemplated hereby will not diminish the assets of the Debtors' estates to the detriment of unsecured creditors and such payment is consistent with the priority of claims under the Bankruptcy Code.

II. PAYMENT OF THE CONTRACTOR CLAIMS IS APPROPRIATE UNDER BANKRUPTCY CODE SECTIONS 362(b)(3) AND 546(b).

16. Under Bankruptcy Code section 362(b)(3), the act of perfecting Liens, to the extent consistent with Bankruptcy Code section 546(b), is expressly excluded from the automatic stay. Moreover, under Bankruptcy Code section 546(b), a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an

³ The Debtors believe that the value of the property that secures the Contractor Claims exceeds the value of the Claims, and, thus, that the holders of Contractor Claims are entitled to interest. 11 U.S.C. § 506(b); see also United Sav. Assoc. v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 372-73 (1988) (noting that interest may be paid to a secured creditor if such creditor maintains a "security cushion").

interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A).

17. Therefore, payment of the Contractor Claims pursuant to this Motion is appropriate, as the Liens are capable of being perfected and asserted against the Debtors' estates, notwithstanding the automatic stay.

III. PAYMENT OF THE CONTRACTOR CLAIMS IS APPROPRIATE UNDER SECTIONS 1107(a) AND 1108.

18. The Debtors, operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." Id.

19. Courts have noted that there are instances in which a debtor in possession can fulfill

its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." Id. The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," id. at 479, and also when the payment was to "sole suppliers of a given product," id. at 498. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

20. Payment of the Contractor Claims meets each element of the CoServ court's standard. First, as described above, the Contractors have asserted liens - secured claims - against certain of the Debtors'

properties. Failure to satisfy these Contractor Claims would likely result in a Contractor refusing to continue to do business with the Debtors, jeopardizing the Debtors' ongoing construction, maintenance and repair projects (the "Projects") and thereby severely disrupting the Debtors operations. Moreover, satisfaction of the Contractor Claims is required by most, if not all, of the Debtors' real property leases and mortgages, and a failure to pay the Contractor Claims would therefore jeopardize the Debtors' real property interests.

21. Second, the harm and economic disadvantage that would stem from the failure to pay any of the Contractor Claims is grossly disproportionate to the amount of the prepetition claim that would have to be paid. Any disruption in the Debtors' Projects would significantly disrupt the Debtors' businesses and would cost the Debtors' estates millions of dollars in lost revenues.

22. Finally, with respect to each of the Contractors, the Debtors have examined other options short of paying the Contractor Claims and have

determined that to avoid significant disruption of the Debtor' business operations there exists no practical or legal alternative to payment of the Contractor Claims.

23. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 by payment of the Contractor Claims.

IV. THE DOCTRINE OF NECESSITY AND BANKRUPTCY CODE SECTION 105 FURTHER SUPPORT PAYMENT OF THE CONTRACTOR CLAIMS.

24. Moreover, the Debtors' proposed payment of the Contractor Claims should be authorized pursuant to Bankruptcy Code section 105 and under the "doctrine of necessity."

25. Bankruptcy Code section 105 authorizes this Court "to issue any order . . . necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105. For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the going concern value of their businesses in order to effect a successful reorganization through, among other things, continuing the orderly day-to-day operation of the Debtors'

electronics retail business, payment of the Contractor Claims as requested herein is proper in accordance with Bankruptcy Code section 105.

26. Payment of the Contractor Claims is further supported by the doctrine of necessity. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. See In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor[,]" and must show a "substantial necessity."); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment).

27. The doctrine of necessity is a widely accepted component of modern bankruptcy jurisprudence. See In re NVR L.P., 147 B.R. at 127 ("[T]he 'necessity

of payment' rule is a narrow exception well-established in bankruptcy common law."); Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers' prepetition claims when such suppliers could destroy debtor's business by refusing to deliver new inventory on eve of debtor's key sales season).

28. For the reasons discussed herein, it is evident that payment of the Contractor Claims is necessary to the Debtors' effective reorganization. Specifically, the Contractors provide services critical to the preservation of the Debtors' estates and the continued operation and maintenance of the Debtors' retail stores, service and distribution centers and other facilities. Because certain of the Contractors may not be party to enforceable agreements – and may be unwilling to do business with the Debtors postpetition – the Debtors request that the Court authorize the payment of the Contractor Claims to ensure that these essential services continue uninterrupted.

29. Furthermore, the Debtors' creditors and these estates clearly will be no worse off but rather better off as a whole, if the Debtors are permitted to

honor the Contractor Claims in the ordinary course. The amounts to be paid pursuant to this Motion are reasonable compared with the importance and the necessity of the Contractors and the losses that the Debtors likely will suffer if these amounts are not paid. The Debtors estimate that the total amount of all outstanding Contractor Claims is approximately \$6.5 million. The value of the Debtors' enterprise – a value that the Debtors are maintaining and maximizing for the benefit of all creditors in furtherance of their fiduciary duty to these estates – vastly exceeds this amount.

30. Hence, this Court should exercise its equitable powers to grant the relief requested in this Motion.

V. PAYMENT OF THE CONTRACTOR CLAIMS IS WARRANTED UNDER BANKRUPTCY RULE 6003.

31. Similarly, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that

arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003.

32. No court within the Fourth Circuit has interpreted the "immediate and irreparable harm" language in the context of Bankruptcy Rule 6003 in any reported decision.⁴ However, the Fourth Circuit Court of Appeals has interpreted the same language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Hughes Network Systems, Inc. v. Interdigital Communications Corp., 17 F.3d 691, 694 (4th Cir. 1994). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Scotts Co. v. United Industries Corp., 315 F.3d 264, 283, (4th Cir. 2002)

⁴ Although there is not direct authority concerning Bankruptcy Rule 6003 in the Fourth Circuit, at least one bankruptcy court, applying Bankruptcy Rule 6003, concluded that first-day relief in a similar context was warranted because such relief was necessary to avoid irreparable harm. See In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549-50 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm).

(citing Direx Israel, Ltd. v. Breakthrough Medical Corp., 952 F.2d 802, 812 (4th Cir. 1991)).

33. The Debtors' business and prospects of reorganization will be seriously undermined if the Contractors are not paid and if the Contractors, as a consequence, assert Liens on the Debtors' property and discontinue work at this critical juncture. Indeed, the vast majority of the Projects on which the Contractors are working concern ongoing maintenance of the Debtors' stores, service centers, distribution centers and other facilities. This maintenance is not optional, and if the Contractors depart because they have not been paid, the Debtors will be hard-pressed to find any other comparably skilled persons willing to work for them. The damage to the Debtors' prospects for rehabilitation, and hence the costs to creditors as a whole, would be immediate and irreparable.

34. Accordingly, the Court should allow the payment of the Contractor Claims as requested herein.

35. Courts in this District and elsewhere have granted the same or similar relief in other cases. See, e.g., In re Movie Gallery, Inc., Case No. 07- 33849

(DOT)(Bankr. E.D. Va. Oct. 17, 2007)(authorizing payment to certain lien claimants); In re U.S. Airways, Inc., Case No. 04-12819 (SSM)(Bankr. E.D. Va. Sep. 14, 2004)(authorizing payment to certain prepetition maintenance providers, shippers and contractors); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW)(Bankr. D. Del. Jun. 13, 2007).

36. Nothing in this Motion shall be construed as a request for authority to assume any executory contract under Bankruptcy Code section 365.

37. The Debtors reserve their right to contest the amount of the Contractor Claims or the amount or existence of any of the Liens on any ground permitted by applicable law. By this Motion, the Debtors do not waive any rights with respect to the Liens or the property securing the Liens.

38. Notwithstanding anything to the contrary herein, any payment to be made hereunder shall be subject to any cash collateral or postpetition financing documents or orders approved or entered in these cases.

NOTICE

39. Notice of this Motion will be given to:

(i) the Office of the United States Trustee for the Eastern District of Virginia; (ii) counsel to the agent for Debtors' postpetition lenders; (iii) counsel to the agent for the Debtors' prepetition lenders; and (iv) the Debtors' top fifty (50) largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice of the Motion is required.

WAIVER OF MEMORANDUM OF LAW

18. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

19. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: November 10, 2008
Richmond, Virginia

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IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

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In re:	:	Chapter 11
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CIRCUIT CITY STORES, INC.,	:	Case No. 08- _____ (____)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	x	

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a),
 362(b), 506, 546(b), 1107(a), 1108 AND 1129 AND
 BANKRUPTCY RULE 6003 AUTHORIZING PAYMENT OF CONTRACTORS
 IN SATISFACTION OF LIENS**

Upon the motion (the "Motion")¹ of the Debtors
 for an order, under Bankruptcy Code sections 105(a),

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

362(b)(3), 506, 546(b), 1107(a), 1108 and 1129 and Bankruptcy Rule 6003 authorizing, but not directing, the payment of contractors and service providers in satisfaction of perfected or potential Liens in the ordinary course of business; and the Court having reviewed the Motion and the Besanko Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.
2. The Debtors are authorized, but not directed, in their sole discretion to pay the Contractor Claims in the ordinary course of the Debtors' businesses; provided, however, that with respect to each Contractor Claim, the Debtors are not authorized to pay a Contractor Claim unless the Contractor has perfected or,

in the Debtors' judgment, is capable of perfecting or may be capable of perfecting in the future, one or more Liens in respect of such Claim. Such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection or possible avoidance of the related Liens.

3. Notwithstanding anything to the contrary in this Order, the prepetition Contractor Claims to be paid pursuant to this Order shall not exceed \$6.5 million in the aggregate (the "Contractor Cap").

4. All payments on the Liens made under this Order shall be subject to the following conditions:

- (a) The Debtors, in their sole discretion, shall determine which Contractors, if any, are entitled to payments; and
- (b) Prior to making payment to a Contractor, the Debtors may, in their absolute discretion, settle all or some of the prepetition claims of the Contractor for less than their face amount without further notice or hearing.

5. All applicable banks and other financial institutions are authorized and directed to receive, process, honor and pay any all checks drawn on the Debtors' accounts to pay the Contractor Claims, whether

such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make such payments.

6. The Debtors are authorized to issue postpetition checks as necessary to replace any prepetition checks that were issued with respect to the Contractor Claims and may be dishonored and such reissued checks shall reduce the Contractor Cap.

7. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

8. Nothing herein shall be deemed an assumption or an authorization to assume any contracts or other agreements with any of the Contractors pursuant to Bankruptcy Code section 365.

9. The provisions contained herein shall not be construed to limit, or in any way affect, the Debtors' ability to contest any claims on any ground permitted by applicable law.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. The requirement under Local Rule 9013-1(G) of the Local Rules for the United States Bankruptcy Court for the Eastern District of Virginia to file a memorandum of law in connection with the Motion is hereby waived.

12. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Richmond, Virginia
November 10, 2008

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Proposed Counsel to the Debtors
and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

I hereby certify that notice of the Debtors' intent to seek entry of the foregoing proposed order was provided to the parties identified in the Motion and copy of this proposed order was provided to the Office of the United States Trustee for the Eastern District of Virginia prior to submission to this Court.

/s/ Douglas M. Foley

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